

**U.S. BANKRUPTCY COURT**  
**District of South Carolina**

Case Number: **15-04033-jw**

**ORDER APPROVING STATEMENT OF DISPUTE**

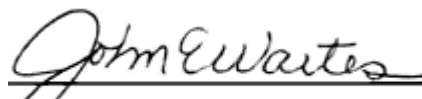
The relief set forth on the following pages, for a total of 4 pages including this page, is hereby ORDERED.

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**FILED BY THE COURT**  
**09/23/2015**



Entered: 09/24/2015



US Bankruptcy Judge  
District of South Carolina

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA**

In re:

**Hampton Hill Athletic Club, Inc.,**

Debtor.

Case No. 15-04033-JW  
Chapter 11

**JOINT STATEMENT OF DISPUTE AND STIPULATION**

The undersigned hereby certify that after consultation, the hearing on the Motion for Relief from 11 U.S.C. § 362 Automatic Stay [Dkt. No. 14] (the “Motion”), originally scheduled for September 8, 2015 at 9:30 AM, after good faith efforts cannot be settled and remains contested so as to require the presentation of evidence and/or argument to the Court for determination. The following information is presented by way of stipulation of the parties:

1. Issues to be decided by the Court. The first issue is whether the lease, which is the subject of the Motion, was terminated prior to the filing of the Petition. The second issue is, if the lease has not been terminated, whether the Debtor is offering adequate protection to the landlord.

2. Position of Parties. Movant asserts that Debtor/tenant was notified prior to the filing of the Petition for Relief that the lease was in default, any applicable cure period had expired, and that the lease was terminated. Movant also asserts that Debtor has only made one-half of the August 2015 rent payment, contrary to the provisions in the Order Authorizing the Use of Cash Collateral on an Interim Basis and Setting Final Hearing [Dkt. No. 55]. Debtor disputes that the lease was properly terminated and believes it has offered adequate protection in the form of one-half of the rent being paid. Further, Debtor is in discussions with an entity to

infuse additional capital into Debtor quickly, and if such happens, then any arrearage will be timely cured.

3. Name of Witnesses to be called at the hearing. Witness for Movant is Robin Dial. Witnesses for Debtor are Anne Wright, Tom Byrne from New River Capital Partners, and Robert McCullough, a certified public accountant.

4. Exhibits/Evidence to be presented. Movant's exhibits to be presented include the lease agreement, any amendments to that lease agreement, and a notice of lease termination, all of which are attached to the Motion. The Debtor's exhibits include a letter of intent from New River Capital Partners and Debtor's budget and business records.

5. Statutory, case law, or other applicable authority. An executory contract or lease validly terminated prior to the institution of bankruptcy proceedings is not resurrected by the filing of a petition and, therefore, there is nothing for the debtor to assume. *See In re Jones*, 118 B.R. 395, 397 (Bankr. D.S.C. 1989).

6. Estimated length of hearing. One hour.

7. Telephone number, email address of counsel/parties. Counsel for Debtor: Jane Downey, (803) 929-0030, jane@mttlaw.com. Counsel for Movant: Stanley H. McGuffin, (803) 779-3080, smcguffin@hsblawfirm.com.

8. Final Authority. Unless otherwise indicated by a separately filed motion, filed simultaneously herewith, which requests that the Court determine whether this proceeding is subject to the entry of final orders or judgments by this Court, the parties submitted this Joint Statement of Dispute consents to this Court entering final orders and judgments in this proceeding.

**[SIGNATURES ON FOLLOWING PAGE]**

**HAYNSWORTH SINKLER BOYD, P.A.**

By: /s/Stanley H. McGuffin  
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Proposed Attorney for Debtor in Possession

September 4, 2015